

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 24 2002

OFFICE OF
MANAGING DIRECTOR

Patricia J. Paoletta, Esquire
Todd M. Stansbury, Esquire
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Wiley Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

RE: Petition for Waiver and Deferral of Application Fees
Fee Control Number 0201108160051001

Dear Counsel:

This is in response to your Petition for Waiver and Deferral of Application Fees (Petition) dated January 8, 2002 that submitted a fee of \$7,510 for a concurrently filed consolidated application for authority to operate earth stations with FSS¹ and DBS² satellites for an integrated two-way broadband video data service (Application).³ On behalf of Digital Broadcasting Applications, Corp. (DBAC), you request that the Commission waive the aggregate application fees for 1 million transmit and receive earth stations⁴ and the applicable fee for the hub earth station, but instead accept the \$7,510 application fee for a VSAT⁵ system.

Your application describes a system that includes a hybrid hub Earth station transmitting in the Ku DBS feeder link band and receiving in the Ku FSS and Ku DBS bands and one million remote transmit and receive earth stations transmitting in the Ku FSS and receiving in the Ku DBS bands, which differs from a standard VSAT system described in our rules. For example, the DBAC system is intended to operate in two bands (e.g., DBS and Ku FSS) using a hybrid antenna. The one million transmit/receive remote locations utilize two antennas -- one for transmit Ku FSS/receive Ku DBS and the other for transmit and receive of LMDS.⁶ Moreover, DBAC intends its system to access and deliver two-way video data service⁷ using Ku-band capacity on an ALSAT FSS satellite and DBS capacity on Canadian licensed satellites. For

¹ Fixed-Satellite Service.

² Direct Broadcast Satellites.

³ FCC File Number SES-LIC-20020109-00023; *Public Notice* Satellite Policy Branch Information, Satellite Space and Earth Station Applications Accepted for Filing, Report No. SAT-00100, January 25, 2002.

⁴ You compute the aggregate fee as the product of \$2,035 (the application fee for one transmit/receive earth station) multiplied by the expected 1 million consumer units (\$2,035,000,000), plus a comparable fee of \$2,035 for the hub station, for a total of \$2,035,002,035.

⁵ VSAT (Very Small Aperture Terminal) satellite earth stations refers to a system of technically identical stations using very small aperture antennas that communicate via satellite with a larger hub station. Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, *Report and Order*, 11 FCC Rcd 21581, 21592, FCC 96-425 (1996). See 47 CFR §§ 25.115; 25.134.

⁶ Local Multipoint Distribution Service.

⁷ DBAC intends that the system will access "video and data services, such as Internet access."

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purposes of evaluating the application in the context of the applicable fee, the system has core similarities to a VSAT system⁸ as well as fixed satellite transmit/receive earth stations.⁹ In that regard, individual application fees for each component are appropriate, *i.e.*, \$7,510 (VSAT initial application per system) and \$2,035 (fixed satellite transmit/receive earth station, per station). Applications to modify the initial or lead applications require an additional fee of \$145 per station. Consequently, we compute the total application fee to be \$145,009,400.¹⁰

The Commission has discretion to "waive . . . payment of charges in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. §158(d)(2). We construe this waiver authority narrowly, and limit its application to only those situations where the applicant has made the requisite showing of good cause and demonstrated that the action would promote the public interest.

The Commission previously has noted the special circumstances among earth station licenses to receive satellite transmissions, including the processing extended to large numbers of "technically identical small antenna earth station facilities."¹¹ Based on the circumstances of this application, we find that DBAC's plan comports with the Commission's expressed intent in previous holdings.¹² As in those situations, we anticipate that the Commission staff will expend fewer resources, and we anticipate the staff's ability to process more efficiently DBAC's Application because the multiple earth stations are technically identical.

We find that this rationale applies to the process involved in the evaluation of the pending application. Consequently, we find that you have shown that the public interest is served in waiving the fees that would have been required to accompany 999,999 separate applications for modification.¹³

⁸ 47 CFR § 25.134.

⁹ Fixed satellite transmit/receive earth stations: initial application (per station); 47 CFR § 25.115(c)(1).

¹⁰ This fee is derived from the sum of \$7,510 plus \$2,035, plus the product of the modification fee, \$145, multiplied by 999,999 fixed transmit/receive stations.

¹¹ See *Report and Order*, Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947 (1987), ¶¶ 245-248.

¹² See *Report and Order*, Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, 12 FCC Rcd 24094 (1997), ¶¶ 201-204 (e.g., "To impose the least burdensome requirements possible while fulfilling our regulatory responsibilities, we will permit applicants to request 'blanket' licenses for large numbers of technically identical receive-only antennas, such as home 'dishes.' Blanket applications may be filed by the space station operator, the service supplier, the equipment manufacturer, or the electronics retailer. Further in cases where we have previously granted a particular satellite access to the United States to provide DTH/DBS or other receive-only services, we will allow the earth station applicant to include an exhibit citing to the previous Commission grant of access for that satellite and stating that it intends to use the satellite to provide the same services as those previously authorized.")

¹³ On this assumed number of applications, the fee we will waive would be \$144,999,855.

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Even so, the amount you submitted with the Petition (\$7,510) is less than the total fee required for the elements of the DBAC's proposal (\$9,545). Consequently, the additional fee of \$2,035 is due. Because we also grant your request for deferral of payment, no penalty is assessed; however, the additional payment must be paid within 30 days of the date of this letter. If you have any questions concerning this letter, you may call the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



 Mark A. Reger
Chief Financial Officer

Enclosure:
Form 159

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)
Digital Broadband Applications Corp.)
 Petition for Waiver and Deferral of)
 Application Fees Pursuant to Section)
 1.1117 of the Commission's Rules)

PETITION FOR WAIVER AND DEFERRAL OF APPLICATION FEES

Digital Broadband Applications Corp. ("DBAC"), pursuant to Section 1.1117 of the Federal Communications Commission's ("FCC" or "Commission") Rules, requests a waiver and deferral of application fees associated with its concurrently filed consolidated application ("Application") for authority to operate earth stations with FSS and DBS satellites for an integrated two-way broadband video data service.¹ The Communications Act of 1934, as amended ("the Act"), and the Commission's Rules specifically provide that such fees may be waived and deferred where good cause is shown and the public interest would be served.² As demonstrated below, good cause exists for, and the public interest would be served by, waiver and deferral of fees in this case because the application fee would not be commensurate with the Commission's actual costs of processing DBAC's Application and would represent a regulatory barrier to DBAC's provision of service.

¹ DBAC filed its application electronically via the International Bureau's filing system ("IBFS") on January 8, 2002. A copy of that Application is attached.

² 47 U.S.C. § 158(d)(2); 47 C.F.R. § 1.1117.

I. BACKGROUND

DBAC proposes to offer an integrated two-way video data service using Ku-band capacity on an "ALSAT" FSS satellite and DBS capacity on the Canadian licensed Nimiq and Nimiq 2 satellites. In areas where the use of LMDS spectrum is feasible, Internet access and content will be provided through LMDS spectrum, thereby offloading capacity from the DBS and FSS satellites to ensure uninterrupted Internet service in rural markets. Customers will transmit requests for video and data services, such as Internet access, using either an "ALSAT" satellite or LMDS spectrum and will receive video and data services from the Nimiq satellites or LMDS spectrum. DBAC seeks authority to operate one hub and 1,000,000 transmit/receive remote terminals. Each of DBAC's remote terminals will be equipped with a hybrid antenna that is capable of uplinks with the FSS satellite and downlinks with the Nimiq satellites, and in certain markets, a second antenna will be attached to the hybrid antenna for video and Internet content through terrestrial LMDS spectrum. This antenna will be mounted with a common bracket and be supported by an integrated electronics package behind this array.

The FCC's Rules designate the following schedule of charges for applications, which could be applied to DBAC's proposed service:

Fixed Satellite Very Small Aperture Terminal (VSAT) Systems:

a. Initial Application (\$7,510.00)³

Fixed Satellite Transmit/Receive Earth Station

a. Initial Application (per station) (\$2035.00)⁴

DBAC's system is most like a VSAT system, therefore, it should be subject to the \$7510.00 application fee for an initial application for a VSAT system. As stated previously, DBAC's

³ 47 C.F.R. § 1.1107(6)(a).

⁴ 47 C.F.R. § 1.1107(3)(a).

system architecture consists of 1,000,000 technically identical earth stations and one large hub, operating in the Ku and DBS bands. This architecture is consistent with the FCC's definition of VSAT systems, which are networks of technically identical stations using very small aperture antennas that communicate via satellite with a relatively larger hub station.⁵ Although historically the VSAT licensing scheme has been applied to systems with high numbers of transmit/receive terminals operating in the Ku-band, the FCC more recently has extended its VSAT licensing policy to other frequency bands as well.⁶ As such, because DBAC believes that its system is most like a VSAT network, it has paid the \$7510.00 application fee. However, if the Commission determines that the \$2,035.00 fee for transmit/receive earth stations applies to each of DBAC's 1,000,000 consumer units and hub earth station, DBAC seeks a waiver of that \$2,035,002,035.00 application fee.

II. GOOD CAUSE EXISTS FOR, AND THE PUBLIC INTEREST WOULD BE SERVED BY, WAIVER AND DEFERRAL OF THE TRANSMIT/RECEIVE EARTH STATION APPLICATION FEE

The Commission has the authority to waive application fees where—such as here—good cause is shown and the public interest would be served.⁷ As demonstrated below, a fee of more

⁵ *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, 11 FCC Rcd 21581, 21592 (1996) (Report and Order); *Routine Licensing of Large Networks of Small Antenna Earth Stations Operating in the 12/14 GHz Frequency Bands*, 1986 WL 291567 (Apr. 9, 1986) (Declaratory Order) ("VSAT Order").

⁶ *See, e.g., Onsat Petition for Declaratory Order that Blanket Licensing Pursuant to Rule 25.115(c) is Available for Very Small Aperture Terminal Satellite Network Operations at C-Band, et. al.*, 16 FCC Rcd 11511 (2001) (First Report and Order) (applying VSAT licensing in the C-band); *Boeing Company, Application for Blanket Authority to Operate Up to Eight Hundred Technically Identical Transmit and Receive Mobile Earth Stations Aboard Aircraft in the 14.0-14.5 GHz and 11.7-12.2 GHz Bands*, DA 01-3008 (Dec. 21, 2001) (Order and Authorization) (licensing transmit/receive AMSS earth stations).

⁷ *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

than 2 billion dollars would be prohibitively expensive for DBAC, would deny competitive service offerings to the public and would be incommensurate with FCC processing resources. The Commission established its fee collection program in 1987⁸ to implement provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Budget Act").⁹ The Budget Act added a new Section 8 to the Act prescribing charges for certain regulatory actions taken by the Commission.¹⁰ That section authorizes the Commission to assess and collect application fees pursuant to a prescribed schedule of application fees.¹¹ As required by statute, the Commission reviews and adjusts this application fee schedule every two years.¹² The comprehensive nature of DBAC's proposed services, integrating two-way broadband video and data services, and its system architecture, utilizing FSS, DBS and, in available markets, LMDS spectrum, constitutes the requisite good cause and public interest basis for deferring and waiving the application fees for 1,000,000 transmit/receive consumer units and one hub earth station.

A. FCC Application Fees are Intended to Recover the Costs of Standard Application Processing

The Commission's schedule of application fees is intended to reimburse the government for the work involved in providing certain regulatory services associated with processing applications. In setting the fees, the Commission has noted that "the charges represent a rough

⁸ *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947 (1987) (Report and Order) ("Fee Collection Order") recon. granted by *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 3 FCC Rcd 5987 (1988) (Memorandum Opinion and Order).

⁹ *Comprehensive Omnibus Budget Reconciliation Act of 1986*, Pub. L. No. 99-272, § 5002(e) & (f), 100 Stat. 82, 118-121 (1986) reprinted in 1986 U.S.C.C.A.N. (100 Stat.) 82, 118-121.

¹⁰ 47 U.S.C. § 158.

¹¹ *Id.*, § 158(a).

approximation of the Commission's actual cost of providing the regulatory actions listed" and that "the very core of this effort is to reimburse the government -- and the general public -- for the regulatory services provided to certain members of the public."¹³

However, in certain instances, the Commission's schedule of filing fees may not reasonably approximate the costs involved in handling a particular application or may not otherwise serve the public interest. For this reason, the Act and the Commission's Rules allow for parties to seek a waiver of the application fees.¹⁴ DBAC warrants a filing fee waiver and deferral because many of the processing activities required to issue a new system license—the costs of which the application fees are designed to recover—are simply not required in reviewing DBAC's Application. As an example, the FCC need not review 1,000,001 different technical parameters to grant DBAC's Application. Rather, like a VSAT network, the FCC only needs to review one set of technical parameters for all of the 1,000,000 technically identical remote terminals and one set of technical parameters for the hub. This represents an enormous reduction in Commission hours to review DBAC's Application. Thus, the \$7510.00 application fee paid for this Application would fairly compensate the FCC for its review.

B. The Public Interest Would Be Served by Granting the Requested Fee Waiver and Deferral

In addition to being supported by the requisite good cause, granting DBAC's request for a waiver and deferral of application fees for its transmit/receive system is also consistent with the public interest. Except for the fact that DBAC will be utilizing two Canadian satellites, DBAC

¹² *Id.*, § 158(b).

¹³ *Fee Collection Order*, 2 FCC Rcd at 948.

¹⁴ *See supra* note 1.

would not have to file an application for its consumer units.¹⁵ DBAC proposes to utilize the Canadian Nimiq and Nimiq 2 satellites, but will be providing service to the U.S. DBAC should not be required to pay a fee for each individual consumer unit when similar U.S. video data subscription providers would not need to apply separately for licenses for each of its consumer dishes. It would be unreasonable to require DBAC to pay a \$2035.00 filing fee for each of its 1,000,000 consumer units merely because it is utilizing non-U.S. satellites. To provide its service, DBAC must seek to utilize Canadian satellites because all the current capacity on U.S. DBS satellites is controlled by EchoStar and DirecTV, who are currently seeking Commission authorization to merge operations.¹⁶

As stated previously, DBAC seeks to deploy 1,000,000 transmit/receive consumer units and one hub earth station. Under current Commission fee guidelines, DBAC could potentially be required to pay a fee of \$2035.00 for each transmit/receive unit. That would amount to a total fee of two billion, thirty-five million, two thousand and thirty-five dollars (\$2,035,002,035.00) that would have to be paid by DBAC just for the Commission's review of the Application. Clearly, the imposition of such a high fee was not what the Congress or the Commission intended when the fee guideline was adopted. Such an astronomical application fee would be a barrier to any potential new entrant that desires to offer an innovative, competitive service to the public, as proposed by DBAC. The financial hardship that a \$2 billion filing fee would impose on DBAC, or indeed any other entity, would clearly prevent an application from being filed at

¹⁵ See 47 C.F.R. § 25.131(j); see also *In the Matter of Telesat Canada Petition for Declaratory Ruling for Inclusion of ANIK F1 on the Permitted Space Station List*, (Order) (Sept. 14, 2001) at ¶ 10 (holding that "receive-only earth stations receiving transmissions from any non-U.S. licensed satellite, regardless of whether the satellites in on the Permitted List, must be licensed").

¹⁶ See *EchoStar Communications Corporation, General Motors Corporation and Hughes Electronics Corporation Seek FCC Consent for a Proposed Transfer of Control*, DA 01-3005 (Dec. 21, 2001) (Public Notice).

all. Filing fees should reimburse the government for the costs of processing applications, not act as a regulatory barrier to entry for new, competitive services.

DBAC's service will be an important competitor to video and Internet service providers, offering an alternative for broadband video and Internet access, particularly in rural and other underserved communities. Satellite video is currently limited to two providers, which have recently proposed to merge.¹⁷ Moreover, broadband data services, such as Internet access, over cable or DSL have been severely constrained in part because of the prohibitive rollout costs for low population-density areas. DBAC will offer competitive broadband video data services across America. Imposing such a prohibitively high fee on DBAC will exact a heavy price on the public, especially those in rural America.

III. CONCLUSION

For the reasons set forth above, DBAC respectfully requests that the FCC grant the requested fee waiver and deferral of fees in conjunction with its Application to provide integrated broadband two-way video data service.

¹⁷ *See id.*

Respectfully submitted,

DIGITAL BROADBAND APPLICATIONS CORP.

By:

A handwritten signature in dark ink, appearing to read "Jennifer D. Hindin", written over a horizontal line.

Patricia J. Paoletta

Todd M. Stansbury

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of

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Its Attorneys

January 8, 2002

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RAMIS ACCOUNTS RECEIVABLE - (C) DSG, Inc.
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CD No.	CD DATE	FEE CONTROL No.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
560382	1/10/02	0201108160051001	0005910443	Digital Broadband Applications	1/09/02	\$7,510.00
Total:						\$7,510.00